

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-114

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of the United States Code. It was commenced on March 19, 1999, upon the Board's receipt of the applicant's request. The applicant's application was not complete until June 28, 1999, when the Board received the applicant's military record.

The final decision, dated April 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former fireman in the Coast Guard, asked the Board to correct his DD Form 214 (discharge document) by changing his home of record from ██████████ ██████████ to ██████████ ██████████. He currently lives in ██████████

The applicant began active duty on February 2, 1965, and was discharged on January 31, 1969. He served four years on active duty.

The applicant stated that he lived briefly in ██████████ before enlisting in the Coast Guard. He stated that he arrived in ██████████ on November 25, 1964 and enlisted in the Coast Guard on February 2, 1965. The applicant stated that he believed that an individual must live in a state for a minimum of 90 days to establish legal residency. He stated that he was in ██████████ for only 68 days before entering active duty.

The applicant submitted a statement from his mother. She stated that in November 1964 the applicant moved with his family from their residence ██████████ ██████████ N ██████████ to ██████████

The applicant stated that he discovered the alleged error on his DD Form 214 on October 1, 1996. He stated that the alleged error was brought to his attention, at that time, because his employer had implemented a program authorizing time served on active duty to be counted toward retirement. Apparently, the applicant could not take advantage of the program because he was not a resident of the state of ██████████ at the time he entered active duty.

Views of the Coast Guard

On February 11, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief to the applicant.

The Chief Counsel stated that the Joint Federal Travel Regulations (JFTR) preclude the requested change to the applicant's home of record. He stated that even if the applicant's home of record were stated incorrectly on the DD Form 214, the applicant has not proved it to be a substantial error or injustice.

The Chief Counsel stated that section U(A)-7 of the JFTR defines home of record as "the place *recorded* as the home of the individual when commissioned, appointed, enlisted, inducted, or ordered into the relevant tour of active duty." The home of record is used primarily to determine the extent of the member's entitlement to travel and transportation allowances upon separation from the service.

The Chief Counsel noted that the applicant's enlistment contract signed on February 2, 1965, listed [REDACTED] as his home of record. The Chief Counsel stated that upon the applicant's discharge, he signed the DD Form 214, which listed [REDACTED] as his home of record.

The Chief Counsel argued that any change to the applicant's home of record on his DD Form 214 should be the result of a bona fide error as to the applicant's actual home of record at that time and not a correction based on a matter of convenience.

The Chief Counsel stated that the applicant is confusing the concepts of "domicile" and "legal residence". The Chief Counsel stated that a home of record is not necessarily a member's state of legal residence or domicile.

Applicant's Rebuttal to the Views of the Coast Guard

On March 17, 2000, the Board received the applicant's reply to the views of the Coast Guard. He stated that he was trying to qualify for [REDACTED] retirement. He further stated that "I can not argue with [the Coast Guard's] rebuttal, as the facts speak for themselves. I had truly hoped that a few misguided decisions made many years ago would not in fact weigh so heavy on my future."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's record and submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction of this matter pursuant to section 1552(b) of title 10, United States Code. The application was not timely.

2. To be timely, an application for correction of a military record must be submitted within three years after the alleged error or injustice is discovered or should have been discovered. See 33 CFR 52.22. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. See Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).

3. The applicant claimed that he discovered the alleged error in 1996 upon being informed that his employer had implemented a new program that allowed military service to be counted toward state retirement for those individuals who served in the military while they were [REDACTED] residents.

4. The Board finds that the alleged error should have been discovered upon the applicant's discharge in 1969 or within three years thereafter. At the time of his discharge from the Coast Guard in 1969, the applicant signed his DD Form 214, which listed [REDACTED] as his home of record. Presumably, the applicant read the contents of the DD Form 214 before signing it. He should have discovered the alleged error at that time.

4. Moreover, it is not likely that the applicant will prevail on the merits of this case. Not only was [REDACTED] listed as the applicant's home of record when he was discharged from active duty, it was declared as his home of record when he entered active duty in 1965. In addition, the applicant's mother stated that the applicant moved with his family in 1964 from [REDACTED] to [REDACTED]. There has been no evidence presented that the family's move was for any purpose other than to take up residence in [REDACTED]. The applicant has not presented persuasive evidence that [REDACTED] was not his home of record at the time he entered or left the service.

5. Therefore, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case. It should be denied because it is untimely and because of failure of proof.

ORDER

The application of
correction of his military record is denied.

for

